

Chapter CCXXXIII.¹

SELECT AND JOINT COMMITTEES.

1. Creation and use of joint committees. Sections 2163–2165.
 2. Joint committees created by statute. Sections 2166–2167.
 3. Commissions created by law. Sections 2168–2170.
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2163. A House of Congress may not make reference to a joint committee when such reference is not contemplated by the act creating the committee.

On May 27, 1921,² in the Senate, Mr. Medill McCormick, of Illinois, introduced the bill (S. 1896) to create the department of public works and public lands, and proposed that it be referred to the Joint Committee on the Reorganization of the Administrative Branch of the Government.

Mr. Oscar W. Underwood, of Alabama, raised the question of order on the proposed reference and said:

I do not see how we can refer a Senate bill for consideration to a joint committee of the two Houses. The committees that report on bills to the Senate are Senate committees, and unless some special action of the Senate is taken to authorize a joint committee to make a report to the Senate I do not see how we can properly refer a bill to such a committee. I do not understand how we can receive a report to the Senate from a committee that is composed in part of Members of the House of Representatives. They may not represent the action of the Senate, and we have no control over such a committee. I think the reference of a Senate bill should be to a Senate committee and not to a joint committee of the two Houses. I desire to make the point of order that we can not refer this bill to a joint committee in that way. To get the measure before a joint committee of the two Houses would require the joint action of the two Houses. I do not desire to become involved in what would be bad practice in a matter we could not control. I have no desire to interfere with the reference of the bill to any Senate committee the Senator from Illinois may suggest, but I do not think we can send a bill to a joint committee which we have no control.

The President pro tempore³ sustained the point of order, and on request of Mr. McCormick the bill was referred to the Committee on Expenditures in the Executive Departments.

2164. A joint committee created by statute is not susceptible to control by one House and its duties may not be enlarged or diminished by either House acting independently.

¹Supplementary to Chapter CIII.

²First session Sixty-seventh Congress, Record, p. 1823.

³Albert B. Cummins, of Iowa, President pro tempore.

Suit having been filed against members of a joint committee, the House granted permission to the members on the part of the House to enter appearance in response to judicial process, while the Senate declared it to be an invasion of constitutional privilege and directed the Senate members of the committee to make no appearance in response thereto.

The issuance of legal process against Members of the Congress gives rise to a question of high privilege in their respective Houses.

Membership on joint committees created by statute is not an office in the contemplation of the constitutional provision prohibiting Members of Congress from holding simultaneously over offices under the United States.

No Member can waive the privileges of the House except by express consent thereof.

An instance in which the House decided it is without power to construe statutes which it enacts.

The court in which a Member is challenged was held by the House to be the proper forum in which to plead constitutional exemption and privilege.

Decision of Federal court maintaining jurisdiction of suit brought against Members in their official capacity.

On February 7, 1910,¹ Mr. David E. Finley, of South Carolina, rising to a question of the privileges of the House, submitted the following:

Whereas Allen F. Cooper, George C. Sturgiss, and David E. Finley, Members of the House of Representatives, and constituting the Committee on Printing, and along with three members of the Senate, constituting the Joint Committee on Printing, have at the instance of the Valley Paper Company (Incorporated), plaintiffs, been sued in the Supreme Court of the District of Columbia as members of the Joint Committee on Printing of Congress, calling in question their action as members of such joint committee in rejecting the proposals of the said Valley Paper Company (Incorporated) for furnishing paper for public printing and binding for the period from March 1, 1910, to February 28, 1911, as was done by said Joint Committee on Printing of Congress at the present session of Congress; and

Whereas it is sought by the said plaintiffs or petitioners that a writ of mandamus be issued and directed against said members of the Joint Committee on Printing of Congress, to wit, the three Members of the Senate, who, together with the three Members of the House above mentioned, constitute the said joint committee, commanding them to with draw awards which have heretofore been made and to award said contracts to the plaintiffs; and

Whereas the following rule to show cause has been issued by Mr. Justice Wright in the Supreme Court of the District of Columbia, to wit:

In the Supreme Court of the District of Columbia.

THE VALLEY PAPER COMPANY (INC.), PLAINTIFF, v. THE JOINT COMMITTEE ON PRINTING OF CONGRESS, composed of REED SMOTT, JONATHAN BOURNE, Jr., DUNCAN U. FLETCHER, GEORGE C. STURGISS, ALLEN F. COOPER, and DAVID E. FINLEY, respondents.	}	At law, No.—.
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RULE TO SHOW CAUSE.

Upon consideration of the petition of Valley Paper Company filed herein this 2d day of February, 1910, it is by the court this 2d day of February, 1910, ordered that the respondents,

¹ Second session Sixty-first Congress, Record, p. 1541.

the said Reed Smoot, Jonathan Bourne, jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, members of the Joint Committee on Printing of Congress, show cause, if any they may have, on or before the 11th day of February, 1910, at 10 o'clock a.m., why a writ of mandamus should not be issued as prayed in said petition; provided a copy of said petition and this rule be served upon said respondents, members of the Joint Committee on Printing of Congress, on or before the 7th day of February, 1910.

WRIGHT, *Justice*.

A true copy.

Test:

J. R. YOUNG, *Clerk*,

By H. BINGHAM,

Assistant Clerk.

Resolved, That it be referred to the Committee on the Judiciary of the House of Representatives to inquire and report what action the House of Representatives should take in the premises, and particularly in the matter of instructing the said Allen F. Cooper, George C. Sturgiss, and David E. Finley as to the course they should pursue in the premises.

In speaking to the resolution, Mr. Finley said:

The Committees on Printing of the House and Senate, constituting the joint committee, have considered the matter, and at a meeting this morning action was taken directing me, so far as the House is concerned, to offer this preamble and resolution. We are of the opinion that should we appear in court and answer that proceeding without first obtaining the instruction of the House, we would be guilty of a breach of privilege and liable to censure.

Mr. Speaker, this is in accordance with the instruction of my colleagues on the committee. We are of the opinion that a Member of Congress can not waive his privilege as a Member of Congress, that if he should do so without first obtaining permission of the House he would lay himself liable. The precedents are numerous that an officer of the House can not have a writ of this character issued against him. It has been attempted more than once in the British Parliament and the rule that I have cited holds good. This is the first time in the history of the Government that a committee of Congress has been sued. So that the question is, if the action of Congress or the action of a committee of Congress or a Member of Congress, can be called in question by any court in all the land, when a committee of Congress or a Member of Congress acts in that capacity, then the distinction that is fundamental in the law of the land, defining the three departments of the Government, the executive, the legislative, and the judicial, will be broken down.

After brief debate the resolution was agreed to, and on February 10,¹ Mr. William G. Brantley, of Georgia, from the Committee on the Judiciary, submitted as privileged the report² of the majority of the committee.

The majority report stressed the consideration due coordinate branches of the Government by the House of Representatives, holding:

Your committee believes that while the House of Representatives should be diligent in the preservation of its dignity and of its prerogatives, it should also pay due regard at all times to the dignity and prerogatives of the other coordinate branches of the Government.

The minority views, however, say:

That the committee is a committee of Congress acting for the two Houses and not subject to suit at law. And this legislative power and discretion of Congress to direct and control its printing, the purchase of its stationery and the like, can not be abridged or interfered with by the courts.

There are many like examples. The Committee on the Library originally had the duty of purchase of books for the information of Congress in the Library of Congress. That library has

¹ Record, p. 1723.

² Report No. 432.

grown so that it is now managed by outside officers under a law, but that law still recognizes a supervisory control in certain matters as belonging to the Committee on the Library of the two Houses. Whenever the Joint Committee on Printing has anything to do with the public printing it acts solely as a committee of the two Houses. The Secretary of the Interior, when he acts at all in the matter of the public printing, acts as an officer. In his case he may be amenable to court action, but the committee of Congress can not be subjected to court process because the legislative department in the discharge of its functions must be forever independent of the judicial department.

We are unwilling to allow a general appearance which will admit, even for this particular case, that the committees of this House are responsible to any authority except the House itself.

The majority report considers membership on the Joint Committee on Printing as statutory and therefore beyond the authority and control of the House, and finds:

The Joint Committee on Printing of Congress is created by statute, and not by the rules of either House of Congress. The members of said committee are Members of Congress, and must be such Members under the statute, but the duties they perform are prescribed and defined by law,

Your committee knows of no authority that the House of Representatives has to control or direct the action of said joint committee, and knows of no way by which its duties can be enlarged or diminished or direction given to its work, other than by and through the enactment of some additional law.

The views of the minority combat this position and contend:

The undersigned dissent from the views of the majority of the committee. The Joint Committee on Printing of Congress, in our opinion, is not a mere creature of a statute. It is appointed under rules of the House of Representatives and the Senate. The appointment of the House Members is provided for in Rule X of the House, and the jurisdiction of the committee is defined under House Rule XI. This committee is the creature of Congress. The House Members are provided by House action, and the Senate Members are provided by Senate action. Manifestly this joint committee, created in this way by the two Houses of Congress, was, for the convenience of the two Houses, for the proper discharge of the legislative functions of the Congress, composed of the two Houses. Of course, the House and the Senate could have provided some other way for their necessary printing and the like, but the two Houses of Congress have seen fit to adopt this plan of a joint committee to control the printing, and so forth, of the two Houses. This committee is not appointed by the statute. No legislature can bind any subsequent legislature. Any Senate or any House of Representatives of any Congress may at any time refuse to appoint members of this joint committee. They are not created by and do not hold under a statute.

It is true that when so appointed by the Senate and House of Representatives they receive aid from a statute. Such aid is often granted to different committees in their legislative duties, it being necessary, in the opinion of the two Houses, for the more convenient discharge of their duties to have power conferred upon the committee. For example, it is often necessary that a joint committee of investigation—such as the committee now investigating the Interior Department and the Bureau of Forestry—should have money for its expenses and should have power to enforce process by subpoena, which can be obtained only by law. That law, however, so far as it creates such a committee, is in the nature of a concurrent resolution. A concurrent resolution of both Houses is included in such a law, and the law being for the appointment of a committee for the information of the two Houses, the committee is subject only to the control of those Houses. The law is in aid of their legislative duties and not in derogation therefrom. The printing of bills, House and Senate documents, the Congressional Record, and the executive documents was and is primarily for the information of Congress—a necessary part of its legislative business. The proper publication of the laws enacted by Congress is essential to their validity. Congress either directly or through its committees and each House of Congress have from the beginning exercised a control over the public printing. The printer was formerly called the “Congressional Printer,” and was elected by the joint action of the two Houses. It is true that the

scope of the work of the Public Printer has been enlarged perhaps to an extent not thought of in the early days of the Republic. It includes a mass of public documents which are for the information of the people as well as for that of Congress, but which are primarily for the information of Congress and in order to secure good legislation.

Instead of making separate contracts for printing, as was done by Congress in the early days, a supervisory control of the work of the Printing Office is allowed to the Joint Committee on Printing, including the ordering of such emergency documents as may be needed, the selection of the standard of paper, and, in this particular case, the determination by their award as if they were a committee of arbitration, which particular bid is "lowest and best for the interests of the United States." This function of supervision of public printing is one necessarily belonging to the Houses of Congress, so far as the congressional printing is concerned. Such supervision is a legislative act, and the fact that it incidentally affects the other public printing does not make any action of the joint committee in that regard any the less a legislative act.

As to whether the duties of the joint committee are legislative or executive, the reports decline to determine, deeming that question to be irrelevant to the issue presented, although it does differentiate:

Your committee would entertain a different view of the matter if it clearly and conclusively appeared that the acts of the Members complained of were performed under rule or order of the House and not under statute and if it likewise was entirely clear that said acts were legislative and not executive in character.

The minority, however, insist:

The functions of the joint committee in the matter complained of were not a statutory executive duty. They were purely of judgment and discretion, for the contracts are to be awarded by them to the lowest and best bidder in the interest of the Government. Their functions in this matter are not executive, but purely of judgment and discretion as a committee as to what proposals are lowest and best for the interest of the Government. A careful examination of the statute with reference to public printing will show that no executive functions are intrusted to the joint committee. Everything executive is to be done by the Public Printer, and the joint committee only advise, decide, and award, and all this is done the discharge of a necessary authority of the two Houses of Congress—of Congress itself to provide for the printing of the Record, documents, and so forth.

Also, the majority deem it beyond the province of the report to consider whether the suit is against Members of Congress, or against a legal entity created by act of Congress.

But the minority maintain:

It is evident from the process of the court which has been served upon the Representatives named in the preamble to the resolution that whatever acts have been performed or have not been performed by the members of the joint committee were solely in the discretion of the members of the committee as Members of Congress, and it is also evident from the same process that the action of the committee is sought to be reviewed by a writ of mandamus after the act has been performed. A writ of mandamus will not lie for such purposes.

To hold that the members of the joint committee are answerable to court process would be to hold that they are officers within the meaning of the Constitution, and might render nugatory the act which was intended solely to aid the joint committee of the two Houses conveniently and properly to discharge a duty necessarily incidental to the full exercise of the legislative powers of Congress. The inconveniences which would attend the recognition of such a suit are manifold. Members are to be summoned from their legislative duties to appear in court. If judgment goes against them they are in contempt, but no process of contempt, under the Constitution, can issue against them while are engaged in their legislative duties. These members are now so engaged.

It is impossible that any Member of Congress can become an officer under the United States, because upon his becoming such officer he can no longer be a Member of either House, for the reason that "no person holding any office under the United States shall be a Member of either House during his continuance in office." Any statute in question should not be construed as adding any official powers, but only as aiding the committee properly to carry on their work. There is no power conveyed in the statute in question which is inconsistent with the legislative duties of the committee. In fact, as already stated, it is only in aid of their functions as legislators.

The minority therefore conclude that two courses are open:

The first course is to resolve that the judge in granting and issuing the rule to show cause in the mandamus proceedings, and in causing the same to be served upon the Members of the House, thereby unlawfully invaded the constitutional privileges and prerogatives of the House and of its Members, and that the court was without jurisdiction to grant said rule, and that the Representatives should be directed to make no appearance in response thereto.

The second course would be to amend the resolution as reported by the majority of the committee by striking out all after the words "they are thereby granted permission to enter an appearance in response to said rule for the purposes of pleading to the jurisdiction of the court," and inserting in lieu thereof "and if necessary to prosecute an appeal or writ of error from any judgment therein, and for such purpose they are hereby authorized and permitted to absent themselves from the sessions of the House."

On the contrary the report of the majority holds:

Upon the whole, therefore, your committee concludes that there is at least sufficient doubt upon all the questions raised by the said court proceeding, in so far as they may directly or indirectly involve the dignity of the House, to authorize a response to the writ of the court and their consideration in the forum of the judiciary.

In support of this position the report continues:

The Constitution does not exempt any laws or statutes enacted by Congress from judicial construction and enforcement and Congress can not write into the Constitution any limitation upon the judicial power.

It is sufficient to direct attention to the fact that said legal proceeding has been instituted and is based upon a law of the land, and that the acts of the Members of this House complained of are alleged to have been performed under and by virtue of a statute imposing certain duties and not by virtue of any duties imposed by rule or order of the House. Your committee does not believe that Congress has any power to construe the statutes that it enacts, and that regardless of any individual opinions as to the meaning of the particular statute in question and regardless of any individual opinions as to who is or is not exempt from the power of the courts to enforce obedience to said statute, we are of the opinion that the court is the proper forum before which to plead exemption and privilege and by which to interpret and expound the meaning of the statute involved.

And we are further of the opinion that due and orderly procedure and a proper respect for the judicial department of the Government requires that the writ of the court in this particular matter should be responded to.

The report further says:

Your committee has not overlooked the fact that, under the rules and precedents of the House, no Member thereof can waive the privileges of the House except by the express consent of the House, and in order to save all questions of privilege we think it would be advisable for the House to grant permission to the three Members involved to make response to the order of the court.

Accordingly, the majority reports recommend the adoption of the following:

Whereas the Supreme Court of the District of Columbia, at the instance of the Valley Paper Company (Incorporated) as plaintiff, has caused to be served on Allen F. Cooper, George C.

Sturgiss, and David E. Finley, Members of this House, a rule to show why writ of mandamus should not issue against them as members of the Joint Committee on Printing of Congress, by reason of their alleged action as members of such committee in rejecting certain proposals of the said Valley Paper Company (Incorporated) to furnish certain paper for public printing and binding: Now, therefore,

Resolved by the House of Representatives, That the said Allen F. Cooper, George C. Sturgiss, and David E. Finley be, and they are hereby, granted permission to enter an appearance in response to said rule, for the purpose of pleading to the jurisdiction of the court, and taking such further action and interposing such further defenses as to them may seem proper, and for all such purposes they are hereby authorized and permitted to absent themselves from the sessions of the House.

At the close of lengthy debate on the question, Mr. Richard Wayne Parker, of New Jersey, proposed to amend the resolution to read as follows:

Resolved by the House of Representatives, That the said Allen F. Cooper, George C. Sturgiss, and David E. Finley be, and they are hereby, granted permission to enter an appearance in response to said rule for the purpose of pleading to the jurisdiction of the court, and if necessary to prosecute an appeal or writ of error from any judgment therein, and for such purpose they are hereby authorized and permitted to absent themselves from the sessions of the House.

The amendment being rejected, Mr. Henry D. Clayton, of Alabama, offered this substitute:

Resolved, That Justice Wright, of the Supreme Court of the District of Columbia, in granting and issuing the following rule to show cause why a writ of mandamus should not be issued, to wit:

In the Supreme Court of the District of Columbia. The Valley Paper Company (Incorporated) plaintiff, *v.* The Joint Committee on Printing of Congress, composed of Reed Smoot, Jonathan Bourne, Jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, respondents. At law, No.—.

RULE TO SHOW CAUSE

Upon consideration of the petition of the Valley Paper Company filed herein this 2d day of February, 1910, it is by the court this 2d day of February, 1910, ordered that the respondents, the said Reed Smoot, Jonathan Bourne, Jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, members of the Joint Committee on Printing of Congress, show cause, if any they may have, on or before the 11th day of February 1910, at 10 o'clock a.m., why a writ of mandamus should not be issued as prayed in said petition: provided a copy of said petition and this rule be served upon said respondents, members of the Joint Committee on Printing of Congress, on or before the 7th day of February 1910.

WRIGHT, *Justice*.

A true copy.

Test:

L. B. YOUNG, *Clerk*.

By H. BINGHAM, *Assistant Clerk*.

against three Member of this body named in said rule, to wit, Representatives George C. Sturgiss, Allen F. Cooper, and David E. Finley, and in causing the said rule to be served upon them, in the opinion of the House of Representatives, thereby unlawfully invaded the constitutional privileges and prerogatives of the House of Representatives and of said Representatives, and was without jurisdiction to grant said rule; and said Representatives are directed to make no appearance in response thereto.

The yeas and nays being ordered on the question of agreeing to the substitute, the yeas were 56, nays 173, and the substitute was rejected.

The resolution submitted in the majority report was then agreed to.

On February 7, 1910¹ in the Senate Mr. Reed Smoot, of Utah, offered as a privileged matter, the following:

Whereas Reed Smoot, Jonathan Bourne, jr., and Duncan U. Fletcher, Members of the United States Senate, who, together with three Members of the House of Representatives constituting the Joint Committee on Printing of Congress, have at the instance of the Valley Paper Company (Incorporated), plaintiffs, been sued in the Supreme Court of the District of Columbia, as members of the Joint Committee on Printing of Congress, calling in question their action as members of such joint committee, in rejecting the proposal of the said Valley Paper Company (Incorporated) for furnishing paper for public printing and binding for the period from March 1, 1910, to February 28, 1911, as was done by said Joint Committee on Printing of Congress at the present session of Congress; and

Whereas it is prayed by the said plaintiffs or petitioners that a writ of mandamus issue directing said members of the Joint Committee on Printing of Congress, to wit, that they withdraw awards which have heretofore been made and that they award certain contracts to the plaintiffs; and

Whereas the following rule to show cause has been issued by Mr. Justice Wright, of the Supreme Court of the District of Columbia, to wit:

In the Supreme Court of the District of Columbia.

<p>THE VALLEY PAPER COMPANY (INCORPORATED), plaintiff, <i>v.</i> THE JOINT COMMITTEE ON PRINTING OF CONGRESS, composed of REED SMOOT, JONATHAN BOURNE, Jr., DUNCAN U. FLETCHER, GEORGE C. STURGISS, ALLEN F. COOPER, and DAVID E. FINLEY, respondents.</p>	}	At law, No.—.
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RULE TO SHOW CAUSE.

Upon consideration of the petition of the Valley Company filed herein this 2d day of February, 1910, it is by the court this 2d day of February, 1910, ordered that the respondents, the said Reed Smoot, Jonathan Bourne, Jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, members of the Joint Committee on Printing of Congress show cause, if any they may have, on or before the 11th day of February, 1910, at 10 o'clock, a.m., why a writ of mandamus should not be issued as prayed in said petition; provided a copy of said petition and this rule be served upon said respondents, members of the Joint Committee on Printing of Congress, on or before the 7th day of February, 1910.

WRIGHT, *Justice*.

A true copy:

Test:

J. R. YOUNG, *Clerk*.

BY H. BINGHAM, *Assistant Clerk*.

Therefore be it

Resolved, That said rule be referred to the Committee on the Judiciary to inquire and report what action the Senate should take in the premises and particularly in the matter of instructing the said Reed Smoot, Jonathan Bourne, Jr., and Duncan U. Fletcher, as to the course they should pursue in the premises.

The resolution was agreed to and on February 10,² Mr. Clarence D. Clark of

¹Second session Sixty-first Congress, Record p. 1516.

²Record, p. 1684.

Wyoming, from the Committee on the Judiciary, presented a report¹ thereon embodying this resolution:

Resolved, That Justice Wright, of the Supreme Court of the District of Columbia, in granting and issuing the following rule to show cause why a writ of mandamus should not be issued, to wit:

In the Supreme Court of the District of Columbia.

The Valley Paper Company (Incorporated), plaintiff, v. The Joint Committee on Printing of Congress, composed of Reed Smoot, Jonathan Bourne, jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, respondents. At law, No.—.

RULE TO SHOW CAUSE.

Upon consideration of the petition of the Valley Paper Company filed herein this 2d day of February, 1910, it is by the court this 2d day of February, 1910, ordered that the respondents, the said Reed Smoot, Jonathan Bourne, jr., Duncan U. Fletcher, George C. Sturgiss, Allen F. Cooper, and David E. Finley, members of the Joint Committee on Printing of Congress, show cause, if any they may have, on or before the 11th day of February, 1910, at 10 o'clock a.m., why a writ of mandamus should not be issued, as prayed in said petition; provided a copy of said petition and this rule be served upon said respondents, members of the Joint Committee on Printing of Congress, on or before the 7th day of February, 1910.

WRIGHT, *Justice*.

A true copy:

Test:

J. R. YOUNG, *Clerk*.

By H. BINGHAM, *Assistant Clerk*.

against three members of this body named in said rule, to wit: Senators Reed Smoot, Jonathan Bourne, jr., and Duncan U. Fletcher, and in causing the said rule to be served upon them, in the opinion of the Senate, thereby unlawfully invaded the constitutional privileges and prerogatives of the Senate and of said Senators, and was without jurisdiction to grant said rule; and said Senators are directed to make no appearance in response thereto.

Mr. Knute Nelson, of Minnesota, offered the following amendment:

Strike out at the end of the resolution the words—

“And said Senators are directed to make no appearance in response thereto—”

And to insert in lieu thereof the words:

“That said Senators, without acknowledging the jurisdiction of said court, may, in their discretion, appear therein for the sole purpose of showing to the court that it is without jurisdiction in the premises and is unlawfully invading the constitutional privileges and prerogatives of the Senate and of said Senators.”

Following extended debate the amendment was disagreed to, yeas 14, nays 45, and the resolution was passed in the form in which offered.

Whereupon, on motion of Mr. Clark, of Wyoming, the following was adopted:

Resolved, That the Secretary of the Senate respectfully communicate to Mr. Justice Wright, justice of the Supreme Court of the District of Columbia, the views of the Senate upon the question of the jurisdiction of said court in the case of The Valley Paper Company (Incorporated), plaintiff, . The Joint Committee on Printing of Congress, etc., in which a rule to show cause was made by said justice on the 2d day of February, A. D. 1910, as expressed in S. R. 173.

On March 21, 1910,² the Senate ordered to be printed as a Senate document the decision and opinion of Mr. Justice Wright, in the Supreme Court of the District of Columbia, including the following:

¹ Senate report No. 213.

² Senate Document No. 806.

THE VALLEY PAPER COMPANY	}	At Law, No. 53242.
v.		
SMOOT ET AL.		

The time for the return to the rule heretofore issued having arrived, appear Hons. Allen F. Cooper, George C. Sturgiss, and David E. Finley, who show the court that they are Members of the House of Representatives of the United States, and they invite the court to consider whether in the judgment of the court the law has imposed upon the court jurisdiction of the matter of the petition. The considerations which have been expressed and the conclusion to which the court's judgment has been led in the progress of an opinion just delivered require the court to answer that it is by law vested with jurisdiction to hear and determine the controversy; that it is obliged by the law of the land to entertain that jurisdiction and to proceed to that hearing and determination. During the progress of the exercise of that jurisdiction, should there transpire an undertaking to infringe the privileges and prerogatives of the Congress of the United States or of its Members, the court expects to be the foremost amongst those who uncover it and who attend to the preservation and the vindication of their inviolate and inviolable character.

2165. Functions delegated to a joint committee by statute may not be usurped by the House.

Regulations established by a joint committee under prerogatives conferred by law are not subject to modification by either House.

On February 21, 1912,¹ Mr. Theron Akin, of New York, asked unanimous consent to have printed in the Record a speech by himself, and with it certain illustrations and diagrams.

Mr. James R. Mann, of Illinois, made the point of order that control of the arrangement and style of the Congressional Record was by law² vested in the Joint Committee on Printing which had promulgated certain regulations governing the pointing of illustrations and diagrams in the Congressional Record, and the House having no jurisdiction could not modify such regulations.

The Speaker³ sustained the point of order.

2166. The statutes provide for the appointment of a joint committee of the two Houses to consider reports as to destruction of useless papers in the executive departments.

The statutes⁴ prescribe this method of disposing of useless papers in the departments:

Except as otherwise provided by law, whenever there shall be in any one of the executive departments of the Government, or in the various public buildings under the control of such departments, an accumulation of files of papers, which are not needed or useful in the transaction of the current business of such department and have no permanent value or historical interest, it shall be the duty of the head of such department to submit to Congress a report of that fact, accompanied by a concise statement of the condition and character of such papers.

Upon the submission of such report, it shall be the duty of the presiding officer of the Senate to appoint two Senators, and of the Speaker of the House of Representatives to appoint two Representatives,⁵ and the senators and Representatives so appointed shall constitute a joint

¹ Second session Sixty-second Congress, Record, p. 2293.

² Revised Statutes, p. 1426, sec. 181.

³ Champ Clark, of Missouri, Speaker.

⁴ Revised Statutes, p. 36, sec. 112.

⁵ In the House, the Committee of Disposition of Useless Executive Papers is now a standing committee and its members are elected by the House. In the Senate, the committee is appointed as occasion requires.

committee, to which shall be referred such report, with the accompanying statement and the papers therein described, and submit to the Senate and House, respectively, a report of such examination and their recommendation.

If such joint committee report that such files of papers, or any part thereof, are not needed or useful in the transaction of the current business of such department, and have no permanent value or historical interest, then it shall be the duty of such head of the department to sell as waste paper or otherwise dispose of such files of papers upon the best obtainable terms after due publication of notice inviting proposals therefor, and receive and pay the proceeds thereof into the Treasury of the United States and make report thereof to Congress.

This statute ¹ was enacted in 1889, in practically its present form and reenacted with slight changes in phraseology in the general revision of the statutes in 1926.

2167. A joint committee may report in either House.

A bill introduced by a member of the joint committee, on the subject for consideration of which the committee had been created, properly would be referred to such joint committee and when reported would be referred to its appropriate calendar.

A joint select committee expires on submitting its final report.

On January 21, 1930,² Mr. Earl C. Michener, of Michigan, by direction of the Committee on Rules, called up the joint resolution (S. J. Res. 7) reading as follows:

Resolved, etc., That a joint committee to be composed of five Members of the Senate, to be appointed by the Vice President, and five Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives, shall make an investigation and report recommendations by bill or otherwise to their respective Houses relative to the readjustment of the pay and allowances of the commissioned and enlisted personnel of the several services mentioned in the title of this joint resolution.

Mr. William B. Bankhead, of Alabama, submitted parliamentary inquiries as to whether the proposed joint committee would report to the House or to the Senate; whether a bill could be referred to it: and whether it would be authorized to report directly to the House or through a standing committee.

After debate the Speaker ³ ruled:

The Chair thinks the first question to be determined is whether in cases of joint committees a part of such joint committee may report to one House and a part to the other.

The Chair recalls some years ago this matter was under debate, and the general practice was that a joint committee could not divide into sections and report to its respective Houses, and that side of the question was forcefully argued by the gentleman from Illinois, the late Mr. James R. Mann. However, the question was directly decided by Mr. Speaker Cannon on January 7, 1907.⁴ The question was raised as to the right of the Members on the House side of a joint committee to report directly to the House itself, and the Speaker held:

“A joint committee, as the Chair understands it, can report to either House; that is the section of the committee composed of Members of the House may report to this House and the section of the committee on the part of the Senate may report to the Senate”—

Which disposes of that question.

There are only two precedents of which the Chair is aware which cover this question on which the Speaker is asked to give his opinion to-day.

¹ 25 Stat. L., p. 672.

² Second session, Seventy-first Congress, Record, p. 2087.

³ Nicholas Longworth, of Ohio, Speaker.

⁴ Sec. 4432, Hinds' Precedents.

In 1920 a joint committee to examine into the precise question was created. It was an act to increase the efficiency of the commissioned and enlisted personnel of the Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and a Public Health Service, and provided for a special joint committee to be composed of five Members of the Senate, to be appointed by the Vice President, and five Members of the House of Representatives, to be appointed by the Speaker of the House, and further provided:

"It shall make an investigation and report recommendations to their respective Houses not later than the first Monday in January, 1922, relative to a readjustment of the pay and allowances of the commissioned and enlisted personnel of the several services herein mentioned."

This is precisely the language of the present resolution which we are considering, except it provides not only that the joint committee may report recommendations but adds "shall make investigation and report recommendations by bill or otherwise." In other words, in so far as the right to report a bill is concerned, the language of this resolution confers even greater jurisdiction than the resolution of 1920.

Now, what happened in the case of the resolution of 1920? That committee sat and had hearings and a bill was introduced by Mr. McKenzie, a member of that committee. The bill was referred by the Speaker back to the committee set up under that act, and that committee reported a bill and it was referred to the calendar and a special rule was had for its consideration and it was agreed to and the bill was passed.

In that case, whether the committee properly had jurisdiction to report the bill or not, that jurisdiction was actually conferred upon it by the reference of the bill by the Speaker. That of itself conferred jurisdiction on the committee to report a bill.

In this case, while the Chair is expressing no opinion as to the merits of the question as to whether this committee should go further than merely to report recommendations which might be referred to the various committees having charge of the subject matter, the Chair is of the opinion that if some member of this committee, under the wording of this resolution, should see fit to introduce a bill, it would be the duty of the Chair, acting under the precedent just quoted, to refer that bill back to this special committee, and then such disposition could be made of it thereafter as they deemed proper.

The Chair wants to add that if, on the contrary, instead of some Member introducing a bill and then having that bill referred by the Speaker back to the committee, the committee saw fit to report a bill as a committee, that bill would have the right to go on the calendar and would be referred to the calendar.

Subsequently, Mr. Finis J. Garrett, of Tennessee, inquired how long the proposed joint select committee would continue to function and when it would expire.

The Speaker held that the joint committee would cease to exist when it filed its final report.

2168. A member of a joint commission created by law may resign without leave of the House; but announcement of such resignation is properly transmitted to the Speaker.

On February 15, 1908,¹ the Speaker² laid before the House the following communication:

To the SPEAKER:

It has just come to my knowledge that I am still a member of the Joint Printing Commission.

It has been and still is my opinion that membership of the Joint Committee on Printing is intended to carry with it ex officio membership on the Joint Committee on Printing. I therefore tender herewith my resignation as a member of said Joint Committee on Printing in order that

¹First session Sixtieth Congress, Record, p. 2073.

²Joseph C. Cannon, of Illinois, Speaker.

the gentleman from South Carolina, the Democratic member of the Joint Printing Committee may be appointed in my stead on the Joint Commission on Printing.

Respectfully,

JAMES M. GRIGGS.

Mr. James R. Mann, of Illinois, as a parliamentary inquiry, raised a question of order as to the acceptance of the resignation.

The Speaker said:

The Chair is of the opinion that the joint commission referred to is a statutory office, created by law. The gentleman may resign from it without leave from the House.

2169. The House does not act upon resignations from statutory offices even when power to fill vacancies in such offices rests with the House or the Speaker.

On March 3, 1909,¹ The Speaker² directed the Clerk to read the following communication:

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., March 3, 1909.

Hon. JOSEPH G. CANNON,

Speaker House of Representatives, Washington, D. C.

Sir: I hereby tender my resignation as a member of the commission created for the purpose of superintending the construction of the House of Representatives Office building and a lighting and heating plant.

Your obedient servant,

W. P. HEPBURN.

Immediately upon the conclusion of the reading the Speaker announced the appointment of Mr. Walter I. Smith, of Iowa, to fill the vacancy occasioned by the resignation.

2170. While the House is without power to remove members of joint committees created by law, or to accept or reject resignations from such offices, such resignations are properly addressed to the joint committee or to the House having authority to fill these vacancies.

Resignations addressed to the Speaker or the House may be withdrawn at any time before action is taken thereon.

The resignation of a Member may be addressed either to the House or to the Governor of the State from which returned. In which latter event the House is advised by the Member or the Governor.

Forms of resignations and of resolutions providing for election of Members to fill vacancies on joint committees.

On January 20, 1910,³ Mr. James T. Lloyd, of Missouri, submitted the following resignation as a member of a joint committee of investigation.

Hon. JOSEPH G. CANNON,

Speaker of the House of Representatives.

DEAR SIR: I hereby request to be excused from service on the joint committee to investigate the Interior Department and the Bureau of Forestry in the Department of Agriculture.

JAMES T. LLOYD.

¹ Second session Sixtieth Congress, Record, p. 3802.

² Joseph G. Cannon, of Illinois, Speaker.

³ Second session Sixty-first Congress, Record, p. 856.

Mr. Lloyd then asked unanimous consent to address the House in explanation of the reasons prompting his resignation from the committee.

Whereupon the House adjourned.

On January 21,¹ Mr. Lloyd asked unanimous consent to withdraw his resignation.

The Speaker held that unanimous consent was not necessary and said:

The Chair thinks the gentleman has the right to withdraw the paper, as the House has taken no action on it.

Mr. Lloyd thereupon submitted his resignation in this form:

HOUSE OF REPRESENTATIVES,
Washington, January 21, 1910.

Hon. JOSEPH G. CANNON,

Speaker of the House of Representatives.

SIR: I hereby resign as a member, selected on the part of the House of Representatives, of the joint select committee authorized by the joint resolution approved January 19, 1910, providing for the investigation of the interior Department, etc.

JAMES T. LLOYD.

Mr. Elmer A. Moore, of Wisconsin, made the point of order that the tender of a resignation from a joint committee could not be made to the House as the House had no jurisdiction over joint committees.

The Speaker² ruled:

As to the right of the gentleman to resign, this is the situation: The gentleman was appointed under the joint resolution, which is a law, which provided that the House should select six members and the Senate six members of the joint committee or commission of investigation, the Vice President appointing the Senate members and the House electing the members on the part of the House. The commission exists under law. The House of Representatives, in the opinion of the Chair, has no power in this instance to make a removal or refuse a resignation. In many respects a resignation from this joint committee is like unto the resignation by a Member of Congress. Ordinarily the resignation by a Member of Congress is to the House. It may be to the governor of the state. The governor of the State in such case notifies the House, or the Member notifies the House that he has sent his resignation to the governor.

Now, the House, under the law, has the power which it has exercised in appointing the members of the commission in question. In the event of a vacancy among the House members upon the commission the House, as the law provides, has the power to fill that vacancy.

A somewhat similar question has arisen before. In February, 1908, the Speaker laid the following communication before the House:

"To the SPEAKER:

"It has just come to my knowledge that I am still a member of the Joint Printing Commission.

"It has been and still is my opinion that membership of the Joint Committee on Printing is intended to carry with it ex officio membership of the Joint Commission on printing. I therefore tender herewith my resignation as a member of said Joint Commission on Printing, in order that the gentleman from South Carolina, the Democratic member of the Joint Printing Committee, may be appointed in my stead on the joint Commission on Printing.

"Respectfully,

JAMES M. GRIGGS."

A question rising as to the acceptance of the resignation, the Speaker said:

"The chair is of the opinion that the joint commission referred to is a statutory office created by law. The gentleman may resign from it without leave from the House."

¹ Record, p. 893.

² Joseph G. Cannon, of Illinois, Speaker.

On March 3, 1909, the Speaker laid before the House the following letter, which the Clerk read, as follows:

UNITED STATES HOUSE OF REPRESENTATIVES,
Washington, D. C., March 3, 1909.

Hon. JOSEPH G. CANNON,

Speaker House of Representatives, Washington, D. C.

SIR: I hereby tender my resignation as a member of the commission created for the purpose of superintending the construction of the House of Representatives Office Building and a lighting and heating plant.

Your obedient servant,

W.P. HEPBURN.

This was a commission created by law. Mr. Hepburn's term as a Member of the House expired with that legislative day. The Speaker designated a Member as his successor on the commission, having the power to do so under the law.

Senator Cockrell also resigned from the Senate building commission in 1905 by a communication to the Senate.

The Regents of the Smithsonian Institution are chosen under a law similar to the law authorizing the joint commission. In 1855 Mr. Rufus Choate resigned his position as one of the Regents.

That is sufficient to show what the practice has been; but if it were an open question, the House having the power under the law to appoint this commission, while it has no power to accept a resignation and no power to refuse to accept such a resignation, in the opinion of the Chair the resignation may be to the House, which has the power to select a successor, or it may be to the commission.

On January 24,¹ Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted this privileged resolution:

Resolved, That immediately upon the adoption of this resolution the House shall proceed by resolution to elect a member of the joint committee for the investigation of the Department of the Interior and the Bureau of Forestry in the Agricultural Department, to fill a vacancy created by the resignation of Mr. Lloyd of Missouri.

The resolution having been agreed to without debate, a resolution offered by Mr. Henry D. Clayton, of Alabama, was then agreed to by the House as follows:

Resolved, That James M. Graham, a Representative from the State of Illinois, be, and he is hereby, elected a member of the joint committee provided for by House joint resolution 103, approved January 19, 1910, in the place of T. Lloyd, a Representative from the State of Missouri, resigned.

¹Record, p. 921.